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cers is not confined to cases in which such construction has been continued and acquiesced in for a long period of time.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 767.]

**6. Taxation (§ 58\*)—Plain Authorization—Construction of Statutes.**—Taxes must be plainly authorized before they can be collected, a rule which does not shut out all the lights that may be reasonably brought to bear in determining the intention of the law-making power.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 85.]

**7. Municipal Corporations (§ 956 (1)\*)—Grant of Power of Taxation—Strictissimi Juris.**—The rule of strictissimi juris applies to an original grant of power to tax, as to a municipality.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 227.]

**8. Statutes (§ 158\*)—Repeals by Implication.**—Repeals by implication are not favored.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 780.]

**9. Taxation (§ 42 (1)\*)—Taxation of Capital of Merchants—Constitution.**—Acts 1915 (Ex. Sess.) c. 85, § 1, not limiting local taxing authority in power to tax capital of merchants to 30 cents on \$100, is not violative of Const. 1902, § 168, requiring that all taxes shall be uniform, levied and collected under general laws; the taxing power having power to tax different classes of intangible personal property at different rates.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 85.]

Error to Hustings Court of City of Richmond.

On rehearing. Former opinion overruled, and judgment reversed.

For former opinion, see 90 S. E. 635.

*H. R. Pollard*, of Richmond, and *E. P. Buford*, of Lawrenceville, for plaintiff in error.

*Geo. Bryan* and *Hill Montague*, both of Richmond, and *E. Warren Wall*, of Farmville, for defendant in error.

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#### HUNTER'S ADM'R v. CHESAPEAKE & O. RY. CO.

Jan. 11, 1917.

[94 S. E. 993.]

Error to Circuit Court, Rockbridge County.

See also, 120 Va. 699, 91 S. E. 181.

*Curry & Curry* and *Timberlake & Nelson*, all of Staunton, for plaintiff in error.

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

*J. M. Perry*, of Staunton, for defendant in error.

PER CURIAM. Affirmed by divided court.

PRENTIS, J., absent.

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CHESAPEAKE & O. RY. CO. *v.* WARE.

Jan. 24, 1918. Rehearing Denied March 21, 1918.

[95 S. E. 183.]

1. **Railroads (§ 478 (1\*))—Fires—Pleading—Negligence.**—Under the Featherstone Act (Acts 1908, c. 269), plaintiff, alleging a destruction of property by fire occasioned by a spark thrown from an engine, need not charge the railroad company with negligence, and demurrer, challenging the sufficiency of allegations attempting to so charge, will be ignored on appeal.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 131.]

2. **Appeal and Error (§ 1051 (1\*))—Evidence—Harmless Error.**—Where the evidence, aside from that objected to by two assignments is sufficient to sustain the verdict, such assignments will not be considered.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 592.]

3. **Railroads (§ 482 (2\*))—Fires—Sufficiency of Evidence.**—Evidence, in an action against a railroad company for damages by fire, examined, and held that the circumstances warranted the jury in finding that the fire was set by sparks from a passing train.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 135.]

4. **Evidence (§ 75\*)—Presumption—Possession of Records and Failure to Controvert.**—Where, in an action against a railroad company for loss by fire, the question is, did a certain train pass at about a certain time? and the plaintiff makes prima facie showing that it did, which defendant, although possessing records of the movements of its trains, did not controvert, such prima facie showing became conclusive of the fact.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 228, 229.]

5. **Evidence (§ 54\*)—Inference Based on Inference.**—Where the inference that a train passed a given place about a certain time has the required basis of a proved fact, although proved by circumstantial evidence, it may, in connection with other facts, form the basis of an inference by the jury that a fire at such time and place was set out by such train.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 323.]

Error to Circuit Court of City of Williamsburg and County of James City.

Action by W. Walker Ware against the Chesapeake & Ohio

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.